

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PHILLIPI S. LOWE,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. 2:07cv450-ID
) (WO)
UNITED STATES,)
)
Defendant.)

ORDER

On July 4, 2007, Plaintiff Phillip S. Lowe filed a notice of appeal to the U.S. Supreme Court, which the court construes as a notice of appeal to the U.S. Court of Appeals for the Eleventh Circuit from the court's order and judgment entered on May 23, 2007 (Doc. Nos. 4-5), and a motion to proceed on appeal *in forma pauperis*. See Smith v. Barry, 502 U.S. 244, 248-49 (1992).

28 U.S.C. § 1915(a) provides that “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” In making this determination as to good faith, the court must use an objective standard, such as whether the appeal is “frivolous,” Coppedge v. United States, 369 U.S. 438, 445 (1962), or “has no substantive merit.” United States v. Bottoson, 644 F.2d 1174, 1176 (5th Cir. Unit B. May 15, 1981) (per curiam).

Applying this standard, the court is of the opinion, for the reasons stated in its order entered on May 23, 2007 (Doc. No. 4), that Lowe’s appeal is without a legal or

factual basis, and, thus, is frivolous and not taken in good faith. See Rudolph v. Allen,
666 F.2d 519, 520 (11th Cir. 1982) (per curiam). Accordingly, it is

CONSIDERED and ORDERED that Lowe's motion to proceed on appeal *in forma pauperis* be and the same is hereby DENIED and that the appeal in this cause is hereby certified, pursuant to 28 U.S.C. § 1915(a), as not taken in good faith.

DONE this 18th day of July, 2007.

/s/ Ira DeMent

SENIOR UNITED STATES DISTRICT JUDGE